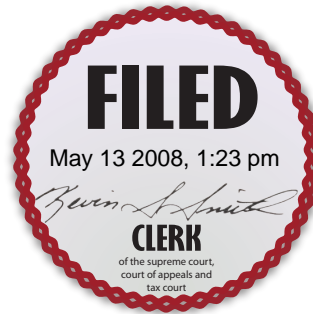


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMARCUS CAIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0709-CR-809
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Lisa Borges, Judge  
Cause No. 49F15-0705-CM-97652

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**May 13, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Jamarcus Cain challenges the sufficiency of evidence supporting his conviction of Class A misdemeanor possession of a handgun without a license.<sup>1</sup> Because decisions regarding the credibility of the witnesses belong to the trial court, we affirm his conviction.

### **FACTS AND PROCEDURAL HISTORY**

Indianapolis Metropolitan Police Department Officer Charles Branson stopped a car Cain was driving because the license plate was expired. Cain did not have a driver's license. Officer Branson wrote a ticket and called for a tow truck. He asked Cain and his two passengers to exit the car so that he could conduct an inventory search. When Officer Branson lifted the armrest between the driver and passenger seats, he saw half an inch of the butt of a pistol that was tucked in the crack between the seats.

Officer Branson asked Cain if he had a gun permit. Cain said he did not, but the gun belonged to the owner of the car. Cain had borrowed the car from Dewayne Jones. Cain gave Officer Branson a telephone number for Jones, and Officer Branson called Jones from the scene. Jones admitted he owned the car, but denied leaving a gun in the car. Officer Branson arrested Cain.

The court tried Cain without a jury. Officer Branson and Cain both testified. The court found Cain guilty.

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<sup>1</sup> Ind. Code § 35-47-2-1; Ind. Code § 35-47-2-23.

## DISCUSSION AND DECISION

Our standard of review for allegations of insufficient evidence is well settled. We look only to the facts most favorable to the judgment, and without reweighing the evidence or reassessing the credibility of the witnesses, we determine whether a reasonable trier of fact could have found evidence beyond a reasonable doubt supporting each element of the crime. *Donnegan v. State*, 809 N.E.2d 966, 976 (Ind. Ct. App. 2004), *trans. denied* 822 N.E.2d 972 (Ind. 2004).

“Actual possession occurs when a person has direct physical control over the item.” *Henderson v. State*, 715 N.E.2d 833, 835 (Ind. 1999). In the absence of actual possession, a conviction may be supported by constructive possession. *Donnegan*, 809 N.E.2d at 976. Constructive possession occurs when a person has both the intent and the capability to maintain dominion and control over an item. *Id.*

To prove a defendant had intent to maintain dominion and control, the State must demonstrate he had “knowledge of the presence of” the item. *Id.* Knowledge “may be inferred from either the exclusive dominion and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the contraband.” *Id.* (quoting *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999)). The “additional circumstances” can include:

- (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant’s plain view, and (6) the mingling of the contraband with other items owned by the defendant.

*Henderson*, 715 N.E.2d at 836.

Here, the State relied on the proximity of the gun to Cain; the gun was tucked into the seat underneath the armrest next to Cain. Cain asserted he did not know the gun was there and the gun belonged to Jones. But Jones told the officer he did not leave the gun in his car when he loaned the car to Cain.<sup>2</sup> Neither party called Jones to testify. Cain took the stand in his own defense, but the court explicitly found he lacked credibility. (*See* Tr. at 40.) Although the evidence was modest, it is sufficient to support Cain's conviction.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.

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<sup>2</sup> This distinguishes *D.C.C. v. State*, 695 N.E.2d 1015 (Ind. Ct. App. 1998), on which Cain relies.